(9) (8)

Nos. 87-453 and 87-464

Supreme Court, U.S.
FILED
JUN 29 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

AMERADA HESS CORPORATION *et al.*,
Appellants,

v.

DIRECTOR, DIVISION OF TAXATION,
Appellee.

TEXACO INC. and TENNECO OIL COMPANY,
Appellants,

v.

DIRECTOR, DIVISION OF TAXATION,
NEW JERSEY DEPARTMENT OF THE TREASURY,
Appellee.

On Appeals from the Supreme Court of New Jersey

JOINT APPENDIX

ROBERT L. MOORE, II
MILLER & CHEVALIER, Chartered
Metropolitan Square
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 626-5800

LAURENCE REICH
CARPENTER, BENNETT & MORRISSEY
Three Gateway Center
100 Mulberry Street
Newark, New Jersey 07102
(201) 622-7711
Counsel for Appellants

MARY R. HAMILL
Deputy Attorney General
Division of Law
Hughes Justice Complex, CN-112
Trenton, New Jersey 08625
(609) 292-1526
Counsel for Appellee

APPEALS DOCKETED SEPTEMBER 18, 1987
PROBABLE JURISDICTION NOTED MAY 16, 1988

46 pp

TABLE OF CONTENTS

	Page
Relevant Docket Entries	1
Tax Court Stipulation of Facts	9
Stipulation Exhibit—Inflation Adjustment Factor	30
Stipulation Exhibit—IRS Form 6249, Computation of Overpaid Windfall Profit Tax	32
Stipulation Exhibit—Statement Concerning CBT Assessment Notices	34
Tax Court Supplementary Stipulation of Facts	35
Supplementary Stipulation Exhibit—Representative List of Non-Oil Producing Chemical Companies Engaged in Business in New Jersey	40
Excerpt from Monthly Energy Review	41
Supreme Court Order Inviting Solicitor General to File Briefs Expressing the Views of the United States	42
Supreme Court Orders Noting Probable Jurisdiction and Consolidating Cases	43

• • • •

The following items have been omitted in printing this Joint Appendix because they appear on the following pages in the Appendix to the Jurisdictional Statement in No. 87-453:

Opinion and Judgment of the Supreme Court of New Jersey	1a
Opinion of the Superior Court of New Jersey, Appellate Division	36a
Opinion of the Tax Court of New Jersey	43a
Opinion of the Tax Court of New Jersey Denying Reconsideration	50a

RELEVANT DOCKET ENTRIES

TAX COURT OF NEW JERSEY

A. *Parties*:

Name	*Docket No.*
Diamond Shamrock Corporation *	CB 065B-83
Shell Oil Company *	CB 066B-83
Cities Service Company *	CB 067B-83
Exxon Corporation *	CB 068B-83
Atlantic Richfield Company	CB 069B-83
Union Oil Company of California *	CB 070B-83
Mobil Oil Corporation *	CB 071B-83
Phillips Petroleum Company *	CB 072B-83
Gulf Oil Corporation *	CB 073B-83
Chevron U.S.A. Inc.*	CB 074B-83
Conoco Inc.*	CB 075B-83
Amerada Hess Corporation	CB 064B-83
Texaco Inc.	CB 077B-83
Tenneco Oil Company	CB 128B-83

B. *Relevant Docket Entries*:

Description	*Date*
1. Complaints Filed:	
Diamond Plaintiffs	May 6, 1983
Amerada Hess	May 6, 1983
Texaco	May 6, 1983
Tenneco	Oct. 7, 1983

---

* The New Jersey actions and appeals of these plaintiff corporations were not consolidated (other than for briefing and argument purposes) because of practical difficulties arising from protective orders entered in each of the actions. These plaintiff corporations, however, shared common counsel, and in most instances pleadings and other papers were filed on behalf of each either simultaneously or in a joint filing. Accordingly, for ease of reference, these plaintiff corporations will be referred to collectively as the "Diamond Plaintiffs."

Description	*Date*
2. Amended Complaints Filed:	
Cities Service	June 27, 1983 and Dec. 14, 1983
Shell	Dec. 14, 1983
Gulf	Dec. 14, 1983
Diamond Shamrock	Dec. 22, 1983
3. Answers Filed:	
Diamond Plaintiffs	July 5, 1983
Amerada Hess	July 5, 1983
Texaco	July 5, 1983
Tenneco	Oct. 27, 1983
4. Answers to Amended Complaints Filed: *	
Shell	Dec. 19, 1983
Diamond Shamrock	Jan. 3, 1984
Cities Service	July 5, 1983 and Dec. 19, 1983
5. Motion for Summary Judgment and Supporting Memorandum (Amerada Hess) Filed:	March 16, 1984
6. Stipulation of Facts Entered and Filed (Diamond Plaintiffs):	May 11, 1984
7. Supplementary Stipulation of Facts Entered and Filed (Diamond Plaintiffs):	May 11, 1984

* No answer was required to be filed to the amended complaint of Gulf pursuant to the Pretrial Order entered in that action.

Description	*Date*
8. Notice of Motions for Summary Judgment and Supporting Joint Brief and Appendix (Diamond Plaintiffs) Filed:	May 11, 1984
9. Notice of Motions for Summary Judgment and Supporting Memorandum (Texaco and Tenneco) Filed:	May 11, 1984
10. Notice of Cross-Motions for Summary Judgment and Motion for Consolidation with Supporting Affidavits and Memorandum (Defendant) Filed:	June 8, 1984
11. Joint Brief and Appendix of Defendant in Opposition to Plaintiffs' Motions for Summary Judgment and in Support of Defendant's Cross-Motions for Summary Judgment Filed:	June 8, 1984
12. Reply Briefs Filed:	
Diamond Plaintiffs	June 22, 1984
Amerada Hess	June 22, 1984
Texaco	June 22, 1984
Tenneco	June 22, 1984
13. Joint Reply Brief of Defendant Filed:	June 28, 1984
14. Oral Argument before Hon. Richard M. Conley, J.T.C., Held:	June 29, 1984

Description	*Date*
15. Opinion of N.J. Tax Court on Motions and Cross-Motions for Summary Judgment:	Sept. 28, 1984
16. Judgments Entered:	
Diamond Plaintiffs	Oct. 5, 1984
Amerada Hess	Oct. 5, 1984
Texaco	Oct. 5, 1984
Tenneco	Oct. 5, 1984
17. Corrected Judgments Entered:	
Shell	Oct. 16, 1984
Cities Service	Oct. 16, 1984
Gulf	Oct. 16, 1984
Amerada Hess	Oct. 16, 1984
Atlantic Richfield	Oct. 16, 1984 and Feb. 21, 1985
Conoco	Feb. 21, 1985
18. Notices of Motion for Reconsideration and Supporting Briefs Filed:	
Diamond Plaintiffs	Oct. 22, 1984
Amerada Hess	Oct. 23, 1984
Texaco	Oct. 24, 1984
Tenneco	Oct. 24, 1984
19. Brief of Defendant in Opposition to Motions for Reconsideration Filed:	Nov. 7, 1984
20. Oral Argument before Hon. Anthony M. Lario, J.T.C., Held:	Nov. 16, 1984
21. Opinion of N.J. Tax Court on Motions for Reconsideration:	Feb. 14, 1985

SUPERIOR COURT OF NEW JERSEY,
APPELLATE DIVISION

A. ***Parties***:

Name	*Docket No.*
Atlantic Richfield	A-02795-84T7
Conoco	A-02796-84T7
Cities Service	A-02797-84T7
Exxon	A-02799-84T7
Tenneco	A-02800-84T7
Phillips	A-02809-84T7
Chevron	A-02812-84T7
Union	A-02814-84T7
Gulf	A-02816-84T7
Shell	A-02818-84T7
Diamond Shamrock	A-02819-84T7
Texaco	A-02832-84T7
Amerada Hess	A-02846-84T7

B. ***Relevant Docket Entries***:

Description	*Date*
1. Notices of Appeal Filed:	
Diamond Plaintiffs	Feb. 28, 1985
Texaco	March 1, 1985
Tenneco	March 1, 1985
Amerada Hess	March 6, 1985
2. Order Granting Motion to Consolidate Appeals for Argument:	April 8, 1985
3. Joint Brief and Appendix of Diamond Plaintiffs Filed:	May 20, 1985
4. Joint Brief and Appendix of Texaco and Tenneco Filed:	May 20, 1985

	Description	*Date*
5.	Brief and Appendix of Amerada Hess Filed:	May 20, 1985
6.	Joint Answering Brief and Appendix of Defendant Filed:	Sept. 13, 1985
7.	Joint Reply Brief of Diamond Plaintiffs Filed:	Sept. 19, 1985
8.	Joint Reply Brief of Texaco and Tenneco Filed:	Sept. 19, 1985
9.	Reply Brief of Amerada Hess Filed:	Sept. 19, 1985
10.	Oral Argument before the Superior Court of New Jersey, Appellate Division, in Consolidated Appeals Held:	Jan. 7, 1986
11.	Opinion of the Superior Court of New Jersey, Appellate Division (Reversing New Jersey Tax Court):	Feb. 7, 1986

SUPREME COURT OF NEW JERSEY

A. ***Parties***:

Name	*Docket No.*
Amerada Hess	25,264
Texaco	25,265
Tenneco	25,266
Diamond Shamrock	25,267
Shell	25,268
Gulf	25,269
Union	25,270

Name	*Docket No.*
Mobil	25,271
Chevron	25,272
Phillips	25,273
Exxon	25,274
Cities Service	25,275
Conoco	25,276
Atlantic Richfield	25,277

B. ***Relevant Docket Entries***:

	Description	*Date*
1.	Notices of Petition of Defendant for Certification Filed:	Feb. 27, 1986
2.	Joint Petition of Defendant for Certification and Appendix (together with copies of Joint Appellate Division Briefs and Appendix) Filed:	March 10, 1986
3.	Joint Brief of Diamond Plaintiffs in Opposition to Petition for Certification (together with copies of Joint Appellate Division Briefs and Appendix) Filed:	March 25, 1986
4.	Joint Brief of Texaco and Tenneco in Opposition to Petition for Certification (together with copies of Joint Appellate Division Briefs and Appendix) Filed:	March 27, 1986
5.	Brief of Amerada Hess in Opposition to Petition for Certification (together with copies of Appellate Division Briefs and Appendix) Filed:	March 27, 1986

Description	*Date*
6. Order Granting Petition for Certification Entered:	June 5, 1986
7. Supplemental Letter of Defendant, Enclosing and Discussing Recent Opinion, Filed:	June 13, 1986
8. Letter Responses of Diamond Plaintiffs and Amerada Hess to Supplemental Letter of Defendant Filed:	June 23, 1986
9. Joint Letter Response of Texaco and Tenneco to Supplemental Letter of Defendant Filed:	June 24, 1986
10. Argument before Supreme Court of New Jersey in Consolidated Appeals:	Nov. 18, 1986
11. Opinion and Judgment of Supreme Court of New Jersey in Consolidated Appeals:	June 22, 1987
12. Notices of Appeal to Supreme Court of the United States Filed:	
Diamond Plaintiffs	Aug. 20, 1987
Amerada Hess	Aug. 20, 1987
Texaco	Aug. 21, 1987
Tenneco	Aug. 21, 1987

TAX COURT OF NEW JERSEY

Docket Nos.

CB 065B-83
CB 066B-83
CB 067B-83
CB 068B-83
CB 069B-83
CB 070B-83
CB 071B-83
CB 072B-83
CB 073B-83
CB 074B-83
CB 075B-83

Civil Actions

DIAMOND SHAMROCK CORPORATION,
SHELL OIL COMPANY,
CITIES SERVICE COMPANY,
EXXON CORPORATION,
ATLANTIC RICHFIELD COMPANY,
UNION OIL COMPANY OF CALIFORNIA,
MOBIL OIL CORPORATION,
PHILLIPS PETROLEUM COMPANY,
GULF OIL CORPORATION,
CHEVRON U.S.A., INC.,
and CONOCO INC.,

Plaintiffs,

—vs—

DIRECTOR, DIVISION OF TAXATION,

Defendant.

STIPULATION OF FACTS

Pursuant to paragraph 10 of each of the Pretrial Orders entered in these actions, and subject to the right of any party hereto (i) to contest the evidentiary issues

of relevancy and materiality and (ii) to supplement this Stipulation by other evidence not inconsistent herewith,

IT IS HEREBY STIPULATED AND AGREED that, for the purposes of these actions, the following statements may be accepted as facts and all exhibits referred to herein and attached hereto are incorporated into this Stipulation and made a part hereof:

DEFINITIONS.

1. As used herein:

(a) "Adjusted Base Price" shall mean and refer to "adjusted base price", as defined in I.R.C. § 4989(a).

(b) "CBT Act" shall mean and refer to the New Jersey Corporation Business Tax Act, as amended, N.J.S.A. 54:10A-1 *et seq.*

(c) "Director" shall mean and refer to the Director of the Division of Taxation, New Jersey Department of the Treasury, the defendant in each of these actions.

(d) "Entire Net Income" shall mean and refer to "entire net income", as defined in and computed in accordance with N.J.S.A. 54:10A-4(k).

(e) "FTI" shall mean and refer to the taxable income, before net operating loss deduction and special deductions, which each Plaintiff reported to the United States Treasury Department on U.S. Form 1120 for the purpose of computing its Federal income tax during the period at issue.

(f) "I.R.C." shall mean and refer to the Internal Revenue Code of 1954, as amended.

(g) "NIL" shall mean and refer to the "net income limitation", as defined in I.R.C. § 4988(b).

(h) "Period at issue" shall mean and refer to the tax years at issue in each of these actions, as specified in

paragraph 2 of each of the Pretrial Orders entered herein.

(i) "Plaintiffs" shall mean and refer, collectively, to Diamond Shamrock Chemicals Company (formerly "Diamond Shamrock Corporation"), Union Oil Company of California, Shell Oil Company, Phillips Petroleum Company, Mobil Oil Corporation, Gulf Oil Corporation, Exxon Corporation, Conoco Inc., CanadianOxy Offshore Production Co. (formerly, "Cities Service Company"), Chevron U.S.A. Inc. and Atlantic Richfield Company.

(j) "Taxable Crude Oil" shall mean and refer to "taxable crude oil", as defined in I.R.C. § 4991(a).

(k) "WPT Act" shall mean and refer to the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. 96-223, 94 Stat. 229 (1980), the tax provisions of which are codified in I.R.C. §§ 4986-4998.

(l) "WPT" shall mean and refer to the tax imposed under the WPT Act.

PARTIES PLAINTIFF.

2. During the period at issue each of the Plaintiffs was a vertically integrated oil and gas company engaged in, among other activities, those ranging from the exploration for crude oil through the production, refining, transportation, distribution and marketing or sale of petroleum and petroleum products.

3. Nine of the Plaintiffs were also engaged in the chemical business during the period at issue, involving the purchase, refining, manufacture, transportation and marketing of chemical products, including petrochemicals derived from petroleum. Of the Plaintiffs so engaged, one Plaintiff was involved only in the transportation and marketing—not the manufacture—of such petrochemicals.

4. The Plaintiffs were during the period at issue and are presently authorized to transact business in most of

the States of the United States and in the District of Columbia, and many of the Plaintiffs transact business and own property in nearly every such State and jurisdiction.

5. Collectively, the Plaintiffs have oil-producing properties in the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, Wyoming and West Virginia, and in Federal offshore waters.

6. During the period at issue the Plaintiffs, collectively, had oil-refining facilities in the States of Alaska, California, Colorado, Hawaii, Illinois, Kansas, Louisiana, Maryland, Minnesota, Mississippi, Montana, New Jersey, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Utah and Washington. Of the eleven Plaintiffs, four had oil-refining facilities in New Jersey during this period.

7. Plaintiff Diamond Shamrock Chemicals Company, formerly "Diamond Shamrock Corporation" ("Diamond"), is a corporation organized under the laws of the State of Delaware, having its principal office in Dallas, Texas. Diamond was authorized to transact business in New Jersey in 1936. Diamond's principal business in New Jersey is the manufacture and marketing of chemicals. Diamond has four plants, two sales offices and an administrative and research center in New Jersey.

8. Plaintiff Shell Oil Company ("Shell") is a corporation organized under the laws of the State of Delaware, having its principal office in Houston, Texas. Shell was authorized to transact business in New Jersey in 1949. Its principal business in New Jersey is the marketing of its products and the manufacture of polypropylene. Shell has a manufacturing plant and a terminal facility

in New Jersey, and also owns some 240 service stations in the State.

9. Plaintiff CanadianOxy Offshore Production Co., formerly "Cities Service Company" ("Cities"), is a corporation organized under the laws of the State of Delaware, having its principal office in Tulsa, Oklahoma. Cities was authorized to transact business in New Jersey in 1970. During the period at issue, its principal business in New Jersey consisted of the distribution, supply and marketing of refined petroleum products and the sale of molded plastic products. Cities had in New Jersey during that period two refined product terminals, a research and technology laboratory, a refined product supply and distribution office, a lubes and specialty products office, an inspection station, an Eastern regional office and a number of service stations.

10. Plaintiff Exxon Corporation ("Exxon") is a corporation organized under the laws of the State of New Jersey, having its principal office in New York City. Exxon was incorporated in New Jersey in 1882. Its principal business in New Jersey is the manufacture and marketing of petrochemicals and the refining and marketing of crude oil, natural gas and petroleum products. Exxon has in New Jersey two chemical plants, a refinery, a manufacturing plant, two chemical division sales offices, four chemical division corporate offices, two divisional offices, two corporate offices, an aircraft hangar and numerous gasoline stations.

11. Plaintiff Atlantic Richfield Company ("Atlantic") is a corporation organized under the laws of the Commonwealth of Pennsylvania, having its principal office in Los Angeles, California. Atlantic was authorized to transact business in New Jersey in 1927. Its principal business in New Jersey is the marketing of natural gas and petroleum products. Atlantic has numerous gasoline stations in New Jersey.

12. Plaintiff Union Oil Company of California ("Union") is a corporation organized under the laws of the State of California, having its principal office in Los Angeles, California. Union was authorized to transact business in New Jersey in 1946. Its principal business in New Jersey is the manufacture, transportation and marketing of chemicals and the operation of two auto/truck stops used primarily in the marketing of the corporation's petroleum products. In addition to the two auto/truck stops, Union also has four chemical facilities in the State.

13. Plaintiff Mobil Oil Corporation ("Mobil") is a corporation organized under the laws of the State of New York, having its principal office in New York City. Mobil was authorized to transact business in New Jersey in 1933. Its principal business in New Jersey is the refining and marketing of petroleum products and, to a lesser extent, the manufacture and marketing of chemicals and paints. Mobil has in New Jersey a refinery, a corporate office and some 423 gasoline stations.

14. Plaintiff Phillips Petroleum Company ("Phillips") is a corporation organized under the laws of the State of Delaware, having its principal office in Bartlesville, Oklahoma. Phillips was authorized to transact business in New Jersey in 1934. Its principal business in New Jersey is the marketing of petrochemicals and refined petroleum products. Phillips has a petrochemical division office and a terminal in New Jersey and also leases, but does not operate, several gasoline stations in the State.

15. Plaintiff Gulf Oil Corporation ("Gulf") is a corporation originally organized under the laws of the Commonwealth of Pennsylvania and since reorganized under the laws of the State of Delaware, having its principal office in Pittsburgh, Pennsylvania. Gulf was authorized to transact business in New Jersey in 1936. Its principal business in New Jersey is the transportation and marketing of petroleum and chemical products. Gulf has two

terminals and a marketing office in New Jersey, and owns various gasoline stations located throughout the State.

16. Plaintiff Chevron U.S.A. Inc. ("Chevron") is a corporation organized under the laws of the State of California, having its principal office in San Francisco, California. Chevron is a wholly-owned subsidiary of Standard Oil Company of California. Chevron was authorized to transact business in New Jersey in 1943. Its principal business in New Jersey is the refining of crude oil, the manufacture and marketing of petroleum products, and the manufacture and sale of petrochemical feedstocks. Chevron has a lube oil bulk plant in New Jersey and owns or leases (but does not operate) 77 retail outlets, including gasoline stations, located throughout the State. During the period at issue Chevron also had a refinery in New Jersey.

17. Plaintiff Conoco Inc. ("Conoco") is a corporation organized under the laws of the State of Delaware, having its principal office in Houston, Texas. Conoco was authorized to transact business in New Jersey in 1929. Its principal business in New Jersey is the marketing and transportation of fuel oil, petrochemicals and other petroleum products. Conoco has in New Jersey two sales offices, two transportation facilities, one antifreeze blending plant and nine refined product storage facilities.

CHALLENGED ASSESSMENTS.

18. Each of the Plaintiffs filed with the Director its New Jersey CBT Return(s) for the period at issue.

19. In computing Entire Net Income on Schedule A of those Returns, Plaintiffs included on line 28 their FTI. A copy of each Plaintiff's CBT Return(s) for the period at issue is on file with the Court, sealed pursuant to the terms of the Protective Orders entered in these cases. Those CBT Returns are hereby designated Con-

fidential Exhibits A-1 to A-11.* A copy of each Plaintiff's separate company *pro forma* Federal income tax return is attached hereto subject to the said Protective Orders and, pursuant thereto, the returns are sealed under separate cover as Confidential Exhibits B-1 to B-11.**

20. In determining FTI, Plaintiffs deducted, among other items, (a) cost depletion with respect to crude oil and with respect to other minerals to the extent that allowable cost depletion exceeded allowable percentage depletion, (b) intangible drilling costs, (c) State income and franchise taxes, (d) Federal excise taxes (exclusive of the WPT), (e) State severance and production taxes, and (f) the WPT.

21. In determining FTI, most of the Plaintiffs also deducted percentage depletion with respect to certain minerals other than crude oil, including regulated natural gas and natural gas sold under fixed contracts as permitted under I.R.C. §§ 613 and 613A(b)(1).

22. [Intentionally Deleted]

23. In determining the adjustments to FTI in computing Entire Net Income (lines 29-35 of Schedule A of the CBT Return), Plaintiffs added back the deductions claimed on their Federal returns for the CBT but did not add back the deductions therein claimed for Federal excise taxes, State income and franchise taxes (other than the CBT), State severance and production taxes, and the WPT.

24. The Director issued assessments to each of the Plaintiffs, assessing deficiencies in the CBT due for the period at issue or reducing refunds claimed by certain of

---

* A list of exhibits filed with this Stipulation or already on file with the Court is attached immediately following the text.

** The designation "Confidential Exhibit ——", as used herein, shall indicate that the exhibit is subject to the terms of the Protective Orders entered in these cases and, pursuant thereto, is submitted herewith under sealed separate cover.

the Plaintiffs in their CBT Returns for that period. Each of those assessments was based upon the determination by the Director that the WPT paid or accrued by the Plaintiffs during the period at issue fell within the category of taxes described in N.J.S.A. 54:10A-4(k)(2)(C).

25. Following the submission of protests by each of the Plaintiffs, a meeting between representatives of the Division of Taxation and the American Petroleum Institute, and conferences between representatives of the Division and each Plaintiff, the Director issued final determination letters to each Plaintiff, assessing additional CBT or in certain cases disallowing or reducing refund claims based upon the failure of the Plaintiffs to make adjustments to their respective FTI in respect of the WPT paid or accrued by each Plaintiff during the period at issue. Copies of the final determination letters of the Director are appended as exhibits to Plaintiffs' complaints herein.

26. The amount(s) at issue with respect to each Plaintiff is (are) set forth in paragraph 4 of the Pretrial Order entered herein in that Plaintiff's case.

EFFECT OF WPT ACT ON PLAINTIFFS.

Taxable Production of Plaintiffs.

27. Well over 50% of the barrels of taxable crude oil produced by the Plaintiffs during the period at issue were included in Tier 1, as defined in I.R.C. § 4991(c). Plaintiffs' taxable production in Tier 2, as defined in I.R.C. § 4991(d), ranged from approximately 4% to less than 20% of their total taxable crude oil production. Plaintiffs' taxable production in Tier 3, as defined in I.R.C. § 4991(e), ranged from less than 1% to approximately 26% of their total taxable production.

28. Included in Confidential Exhibits C-1 to C-11, annexed hereto, is the total number of barrels of crude

oil produced during the period at issue by each Plaintiff from properties in which each such Plaintiff is considered a "producer" under I.R.C. § 4996 and the applicable Treasury Regulations thereunder. Also included therein is the number of barrels of taxable crude oil so produced by each Plaintiff during the period at issue within each of the three Tiers under the WPT Act.

29. All of the Plaintiffs maintain separate records reflecting (a) the number of barrels of domestic crude oil produced from properties in which they are considered "producers" under I.R.C. § 4996 and (b) the number of barrels of domestic crude oil acquired from third parties. Once their own crude oil production is commingled with barrels of crude oil acquired from third parties, however, the records of the Plaintiffs reflect only the total number of barrels of crude oil entering into their respective downstream operations. None of the Plaintiffs keep or maintain, as part of their normal business records, records reflecting the number of barrels, so commingled, which were produced exclusively by each Plaintiff.

30. Of the total barrels of taxable crude oil either produced by the Plaintiffs or acquired from third parties during the period at issue, the number of barrels exchanged with third parties ranged from a net of 0% to 84%. Of the eleven Plaintiffs, one Plaintiff exchanged a net of 0% and 4.8% of such barrels during the years 1980 and 1981, one Plaintiff exchanged approximately 10% of such barrels, eight Plaintiffs exchanged between 20% and 42% of such barrels, and one Plaintiff exchanged approximately 84% of such barrels during the period at issue. The Plaintiff which exchanged a net of 0% and 4.8% of such barrels, sold at the lease or wellhead approximately 53% of the barrels produced by it or acquired from third parties during the years 1980 and 1981.

31. Of the total barrels of taxable crude oil either produced by the Plaintiffs or acquired from third parties

during the period at issue, the number of barrels sold at the lease or wellhead to third parties ranged from 0% to 53%. Of the eleven Plaintiffs, one Plaintiff had no sales at the lease or wellhead during the period at issue, eight Plaintiffs sold between 2% and 10% of such barrels, one Plaintiff sold approximately 12% of such barrels, and one Plaintiff sold approximately 53% of such barrels at the lease or wellhead during that period. The Plaintiff which had no sales at the lease or wellhead, exchanged with third parties approximately 39% of the barrels so produced or acquired during that period.

32. During the period at issue, six of the Plaintiffs maintained records of barrels of taxable crude oil lost after "remov[al] from the premises" within the meaning of I.R.C. § 4986(a) and Treas. Reg. § 51.4996-1(d), or otherwise not accounted for as transfers to downstream operations, sales or other disposals following "remov[al] from the premises." Attached hereto as Confidential Exhibit D-1 is a schedule setting forth the number and percentages of barrels of taxable crude oil so lost or not otherwise accounted for by such Plaintiffs.* For the Plaintiffs referred to in this paragraph, the applicable percentages and number of barrels so lost or otherwise not accounted for ranged from 0% to .39% and from 8.39 barrels to 1,088,847 barrels. An additional Plaintiff, which does not maintain records of lost or otherwise unaccounted for barrels, has estimated that .2% of its taxable crude oil fell within this category during the period at issue. None of those Plaintiffs received any refund of or credit for the WPT paid or accrued with respect to such barrels of taxable crude oil.

Adjusted Base Prices.

33. Attached hereto as Exhibit I is a list showing the Inflation Adjustment Factor, computed and defined under

---

* These Plaintiffs are identified by number only in Confidential Exhibit D-1. Attached hereto as Confidential Exhibit D-2 is a schedule identifying each such Plaintiff by name and number.

I.R.C. §§ 4989(a)(2) and (b), applicable in each calendar quarter from the effective date of the WPT through the third quarter of 1983.

34. For the years 1980 and 1981 the average adjusted base prices applicable to barrels of taxable crude oil with respect to which Plaintiffs were considered "producers" under I.R.C. §§ 4996, computed by dividing the total number of barrels "produced" by each Plaintiff within each tier of taxable crude oil by the aggregate adjusted base values thereof, were as follows:

Tier	1980 Range	1981 Range
1	$13.40-$14.40 *	$14.39-$15.74 *
2	$14.40-$17.10 *	$15.78-$18.75 *
3	$14.92-$19.02	$17.13-$21.10

Net Income Limitation.

35. The number of barrels of taxable crude oil produced by each of the Plaintiffs during the period at issue (expressed as a percentage of each Plaintiff's total taxable production) with respect to which the "windfall profit" attributable thereto was reduced by operation of the NIL (i) during the year 1980 ranged from approximately 14% to 73%, and (ii) during the year 1981 for those Plaintiffs whose period at issue includes 1981 ranged from approximately 10% to 82%. These approximate percentages may be summarized as follows:

---

* These upper range, average adjusted base prices represent the maximum adjusted base prices calculated by one of the Plaintiffs herein. The precise manner in which those prices were calculated is set forth in Confidential Exhibit E attached hereto. All other Plaintiffs computed "average adjusted base prices" by using information derived from their respective Forms 6248 or by producing the information set forth in Temp. Reg. § 150.4997-2(c)(1).

Percentage of Barrels (No. of Plaintiffs)

1980		1981	
14%	(1)	10%	(1)
18%	(1)	20%	(1)
22.5%-24%	(4)	45%	(1)
36%	(1)	82%	(1)
53.5%-57.5%	(2)		
71.5%-73.5%	(2)		

36. The extent to which the WPT liability of each of the Plaintiffs was reduced during the year 1980 by operation of the NIL (expressed as a percentage of the gross WPT liability of each Plaintiff), ranged from 21% to 44%. During the year 1981, the applicable percentage reductions for those Plaintiffs whose period at issue includes 1981 ranged from 3% to 13%. These approximate percentage reductions may be summarized as follows:

Percentage Reductions (No. of Plaintiffs)

1980		1981	
21%-30%	(8)	3%-6%	(2)
37%	(1)	9%	(1)
43%-45%	(2)	13%	(1)

37. Included in Confidential Exhibits C-1 through C-11 are, for each Plaintiff, (i) the total number of barrels of taxable crude oil produced by each Plaintiff during the period at issue, (ii) the number of barrels of taxable crude oil with respect to which the NIL operated to reduce each such Plaintiff's WPT liability, (iii) each Plaintiff's gross WPT liability before application of the NIL, and (iv) each Plaintiff's net WPT liability after application of the NIL.

38. In computing the NIL under the WPT Act, none of the Plaintiffs claimed any deduction for or otherwise

took into account the WPT paid or accrued during the period at issue.

Payment and Filing Requirements.

39. Pursuant to the requirements of I.R.C. § 4995(b) and Treas. Reg. § 51.4995-3, each Plaintiff during the period at issue remitted the WPT to a Federal depository on a semi-monthly basis.

40. Plaintiffs are required to file quarterly Federal excise tax returns on Form 720, accompanied by Form 6047 computing their quarterly WPT liability with respect to (a) their own taxable crude oil production and (b) WPT withheld from payments to others. Copies of Forms 720 and 6047 and the accompanying instructions, including both the Forms applicable during the period 1980-1981 and the current Forms, are attached hereto as Exhibits II and III, respectively.

41. Plaintiffs are also required to file Form 6248 ("Annual Information Return of Windfall Profit Tax") after the close of each calendar year, reporting their WPT liability for that year in respect of their own production. Plaintiffs also file Forms 6248 with respect to WPT withheld from payments to others and furnish each payee a copy of the Form so filed. Attached hereto as Exhibit IV is a copy of Form 6248 and the accompanying instructions.

42. Attached hereto as Confidential Exhibits F-1 and F-2 are representative copies of the Forms 6248 completed and filed by Plaintiffs Exxon and Atlantic during their respective periods at issue.

43. Credits or refunds of WPT attributable to overwithholding or to the application of the NIL may be claimed on Form 6249, a copy of which, including the instructions thereto, is attached hereto as Exhibit V.

44. Attached hereto as Confidential Exhibits G-1 and G-2 are representative copies of the Forms 6249 (without schedules) completed and filed by Plaintiffs Atlantic and Exxon during their respective periods at issue. Confidential Exhibit G-1 does not include a computation in Part V of Form 6249, reflecting the "net income" computation on a property-by-property basis. Confidential Exhibit G-2 includes "net income" computations for several properties. The numbered lines on Confidential Exhibit G-2 generally correspond to the numbered lines in Part V of Form 6249, a copy of which is included in Confidential Exhibit G-1.

MISCELLANEOUS INFORMATION RE PLAINTIFFS.

45. Attached hereto as Exhibits VI-1 through VI-11 are copies of the Securities and Exchange Commission Forms 10-K of each of the Plaintiffs for their respective periods at issue, including their respective annual reports and financial statements.

46. Attached hereto as Exhibits VII-1 through VII-11 are pages from Plaintiffs' Annual Reports or Forms 10-K, reflecting certain information on a per barrel basis. As noted thereon, certain of the Exhibits are taken from 1982 Forms 10-K.

ASSESSMENT AND ENFORCEMENT PRACTICES OF THE DIRECTOR.

47. It is the policy of the Director (i) under N.J.S.A. 54:10A-4(k)(2)(C) to disallow deductions for the Federal corporate income tax, including the Federal income tax on tax preference items, in the computation of Entire Net Income under the CBT Act, and (ii) under N.J.S.A. 54:10A-4(k)(2)(A) to disallow credits for the Federal investment tax credit (I.R.C. § 38), overpayments and deposits of Federal income tax (the "WIN" credit) (I.R.C. § 40), the new employees job credit (I.R.S. § 44B), the foreign tax credit (I.R.C. § 33), the

research credit (I.R.C. § 44F) and the employee stock ownership credit (I.R.C. § 44G).

48. It is also the position of the Director that no credit or deduction may be taken under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 *et seq.*, for the WPT. As of the date hereof, the New Jersey Division of Taxation (the "Division"), to the best knowledge of its personnel, has neither imposed nor proposed any assessments under the New Jersey Gross Income Tax Act in respect of the treatment of the WPT in returns filed under that Act.

49. Attached hereto as Exhibit VII is a copy of a letter dated May 26, 1981 from the then Director, Sidney Glaser, to Stephen L. Taylor, Prentice-Hall, Inc., stating the position of the Director concerning the treatment of the WPT under the CBT Act and the New Jersey Gross Income Tax Act.

50. Attached hereto as Confidential Exhibit H is a statement concerning the Director's issuance of assessment notices under the CBT Act in respect of the WPT to corporations other than the Plaintiffs, Amerada Hess Corporation, Texaco, Inc., and Tenneco Oil Company.

Respectfully submitted,

PLAINTIFF CORPORATIONS

STRYKER, TAMS & DILL
33 Washington Street
Newark, NJ 07102
Attorneys for Plaintiffs

By: /s/ Charles M. Costenbader
CHARLES M. COSTENBADER

HON. IRWIN I. KIMMELMAN
Attorney General of New Jersey
Richard J. Hughes Justice Complex
CN 112
Trenton, New Jersey 08625
Attorney for Defendant

IRWIN I. KIMMELMAN
Attorney General of New Jersey

By: /s/ Mary R. Hamill
MARY R. HAMILL
Deputy Attorney General

Dated: May 11, 1984

STIPULATION OF FACTS

INDEX TO EXHIBITS

Document	Exhibit Designation
(a) NONCONFIDENTIAL:	
Inflation Adjustment Factors	I
Form 720 (with instructions)	II
Form 6047 (with instructions)	III
Form 6248 (with instructions)	IV
Form 6249 (with instructions)	V
Forms 10-K Filed by each Plaintiff During the Period at Issue—	
Diamond Shamrock Corporation ("Diamond")	VI-1
Shell Oil Company ("Shell")	VI-2
Cities Service Company ("Cities")	VI-3
Exxon Corporation ("Exxon")	VI-4
Atlantic Richfield Company ("ARCO")	VI-5
Union Oil Company of California ("Union")	VI-6
Mobil Oil Corporation ("Mobil")	VI-7
Phillips Petroleum Company ("Phillips")	VI-8
Gulf Oil Corporation ("Gulf")	VI-9
Chevron U.S.A. Inc. ("Chevron")*	VI-10
Conoco Inc ("Conoco")	VI-11

* Chevron is a wholly-owned subsidiary of Standard Oil Company of California ("SOCAL"). The Form 10-K annexed hereto as Exhibit VI-10 is the Form 10-K filed by SOCAL during the period at issue.

Document	Exhibit Designation
Schedules reflecting Per Barrel Information for Each Plaintiff**	
Diamond	VII-1
Shell	VII-2
Cities	VII-3
Exxon	VII-4
ARCO	VII-5
Union	VII-6
Mobil	VII-7
Phillips	VII-8
Gulf	VII-9
Chevron	VII-10
Conoco	VII-11
Letter dated May 26, 1981 from the Director to Prentice-Hall, Inc.	VIII
(b) CONFIDENTIAL:	
New Jersey Corporation Business Tax Returns filed by the Plaintiffs During the Period at Issue—***	
Diamond	A-1
Shell	A-2
Cities	A-3
Exxon	A-4
ARCO	A-5
Union	A-6
Mobil	A-7
Phillips	A-8

** The sources of the per-barrel information included in Exhibits VII-1 through VII-11 are the Annual Reports or the Forms 10-K filed by the Plaintiffs during the period at issue or in certain cases during the year 1982.

*** These CBT Returns are exhibits to the Complaints and Amended Complaints filed herein and are on file with the Court.

Document	Exhibit Designation
Gulf	A-9
Chevron	A-10
Conoco	A-11
Separate Company (Pro Forma) Federal Income Tax Returns Prepared by Each of the Plaintiffs—	
Diamond	B-1
Shell	B-2
Cities	B-3
Exxon	B-4
ARCO	B-5
Union	B-6
Mobil	B-7
Phillips	B-8
Gulf	B-9
Chevron	B-10
Conoco	B-11
Schedules for Each Plaintiff Reflecting Crude Oil Production Data and Certain Information Concerning the Net Income Limitation—	
Diamond	C-1
Shell	C-2
Cities	C-3
Exxon	C-4
ARCO	C-5
Union	C-6
Mobil	C-7
Phillips	C-8
Gulf	C-9
Chevron	C-10
Conoco	C-11

Document	Exhibit Designation
Schedule Reflecting Lost Barrels of Crude Oil for Certain Plaintiffs	D-1
Schedule Identifying the Plaintiffs In Exhibit D-1	D-2
Schedule Reflecting the Computation of Adjusted Base Prices by One Plaintiff	E
Form 6248 of Exxon	F-1
Form 6248 of ARCO	F-2
Form 6249 of ARCO	G-1
Form 6249 of Exxon	G-2
Statement of the Director *Re* CBT Assessment Notices	H

STIPULATION EXHIBIT I

Inflation Adjustment Factor

Year	Month	Factor	
		Tier 1 & 2	Tier 3
1980	03	.0195	.0246
1980	04	.0422	.0527
1980	05	.0422	.0527
1980	06	.0422	.0527
1980	07	.0649	.0810
1980	08	.0649	.0810
1980	09	.0649	.0810
1980	10	.0924	.1144
1980	11	.0924	.1144
1980	12	.0924	.1144
1981	01	.1187	.1469
1981	02	.1187	.1469
1981	03	.1187	.1469
1981	04	.1404	.1750
1981	05	.1404	.1750
1981	06	.1404	.1750
1981	07	.1680	.2095
1981	08	.1680	.2095
1981	09	.1680	.2095
1981	10	.1861	.2344
1981	11	.1861	.2344
1981	12	.1861	.2344
1982	01	.2126	.2683
1982	02	.2126	.2683
1982	03	.2126	.2683
1982	04	.2410	.3045
1982	05	.2410	.3045
1982	06	.2410	.3045
1982	07	.2523	.3230
1982	08	.2523	.3230
1982	09	.2523	.3230
1982	10	.2736	.3522
1982	11	.2736	.3522
1982	12	.2736	.3522

1983	01	.2875	.3737
1983	02	.2875	.3737
1983	03	.2875	.3737
1983	04	.3001	.3941
1983	05	.3001	.3941
1983	06	.3001	.3941
1983	07	.3183	.4207
1983	08	.3183	.4207
1983	09	.3183	.4207

Form **6249**
(Rev. January 1984)
Department of the Treasury
Internal Revenue Service

Computation of Overpaid Windfall Profit Tax

▶ See separate instructions.

OMB No. 1545-1226

80

Name | Taxpayer identifying number

PART I.—Type of Return to Which Form 6249 Is Attached

- ☐ Form 720
- ☐ Form 843
- ☐ Form 1040 (and Form 1040NR)
- ☐ Form 1040X
- ☐ Form 1041
- ☐ Form 1120
- ☐ Form 1120F
- ☐ Form 1120X
- ☐ Other Form 1120 (Form 1120-DISC, Form 1120L, Form 1120M, etc.)
- ☐ Form 990-C or Form 990-T
- ☐ Other ▶

PART II.—Overpayment Due to a Withholding Error.—For calendar year ▶

1 Please check the applicable box for the status that resulted in a withholding error:
- ☐ Exempt qualified governmental interest (section 4991(b)(1))
- ☐ Exempt qualified charitable interest (section 4991(b)(1))
- ☐ Exempt Indian oil (section 4991(b)(2))
- ☐ Exempt Alaskan oil (section 4991(b)(3))
- ☐ Exempt royalty owner oil (section 4991(b)(5)) (trusts do not qualify)
- ☐ Exempt independent producer of stripper well oil (section 4991(b)(6))
- ☐ Independent producer oil (section 4992)
- ☐ Trust beneficiary credit or refund (section 6430)
- ☐ Other (attach explanation)

2 Amounts withheld for oil removed during the calendar year (attach Form(s) 6248)	2	
3 Correct amount of tax (see instructions)	3	
4 Overpayment due to a withholding error (subtract line 3 from line 2)	4	

PART III.—Overpayment Resulting From the Net Income Limitation

5 Enter amount from line 19 (Part V)	5	

PART IV.—Combined Overpayment of Windfall Profit Tax

6 Total amount of credit or refund (add lines 4 and 5) (see instructions)	6	

For Paperwork Reduction Act Notice, see page 1 of the instructions. Form **6249** (Rev. 1-84)

Form 6249 (Rev. 1-84) Page **2**

PART V.—Net Income Limitation—For tax year beginning 19 , and ending 19

Property	Name of Property	Identification Number	Date of Acquisition
A			
B			
C			
D			
E			
F			

Gross Income	A	B	C	D	E	F
1 Gross income (see instructions)						
2 Reductions						
(a) Gas removals						
(b) Exempt oil removals						
(c) Total (add lines 2(a) and 2(b))						
3 Gross income from removal of taxable oil (subtract line 2(c) from line 1)						
Expenses solely attributable to the production of taxable crude oil (lines 4 through 9)						
4 Production and severance tax						
5 Lease operating expenses						
6 Depreciation						
7 Overhead						
8 Cost depletion computed under section 4988(b)(3)(C) and regulations section 51.4988-2(b)(3) (see instructions)						
9 Other expenses (see instructions)						
10 Proportionate share of expenses not solely attributable to the production of taxable crude oil (see instructions)						
11 Total expenses for the property (add lines 4 through 10)						
12 Taxable income from the property (subtract line 11 from line 3)						
13 Number of taxable barrels of crude oil sold from the property during the tax year						
14 Divide line 12 by line 13 (net income per barrel)						
15 Multiply line 14 by 90% (net income limitation per barrel)						
16 Windfall profit tax computed on the lower of (a) windfall profit per barrel, or (b) net income limitation per barrel (see instructions)						
17 Tax paid or deemed paid						
18 Amount of overpayment (subtract line 16 from line 17) (or underpayment—subtract line 17 from line 16)						

19 Total amount of overpayment. Enter here and on line 5, page 1 (If an underpayment, see instructions)

Form prescribed by T.D. No. 6411-1 (2/84)

DIAMOND SHAMROCK, *et al.*

STIPULATION OF FACTS

Confidential Stipulation

Exhibit H

As of the date of the Stipulation of Facts in this matter, in addition to assessment notices issued to the Plaintiffs, Amerada Hess Corporation, Texaco, Inc., and Tenneco Oil Company, the Director had issued assessment notices under the CBT Act in respect of the WPT to two chemical companies and one conglomerate.

TAX COURT OF NEW JERSEY

Docket Nos.
CB 065B-83 CB 072B-83
CB 066B-83 CB 073B-83
CB 068B-83 CB 074B-83
CB 070B-83 CB 075B-83
CB 071B-83
Civil Action

DIAMOND SHAMROCK CORPORATION, SHELL OIL COMPANY, EXXON CORPORATION, UNION OIL COMPANY OF CALIFORNIA, MOBIL OIL CORPORATION, PHILLIPS PETROLEUM COMPANY, GULF OIL CORPORATION, CHEVRON U.S.A. INC., and CONOCO INC.,

Plaintiffs,

-vs-

DIRECTOR, DIVISION OF TAXATION,

Defendant.

SUPPLEMENTARY STIPULATION OF FACTS

Pursuant to paragraph 10 of each of the Pretrial Orders entered in these actions, and subject to the right of any party hereto (i) to contest the evidentiary issues of relevancy and materiality and (ii) to further supplement this Supplementary Stipulation by other evidence not inconsistent herewith,

IT IS HEREBY STIPULATED AND AGREED that, for the purposes of these actions, the following statements may be accepted as facts and all exhibits referred to herein and attached hereto are incorporated into this Supplementary Stipulation and made a part hereof:

SCOPE OF STIPULATION.

1. This Supplementary Stipulation relates to information furnished to the defendant, Director, Division of Taxation (the "Director"), by each of the nine party plaintiffs hereto (the "Plaintiffs") in response to Interrogatories heretofore propounded by the Director in these actions. Specifically, the facts herein stipulated relate to the Fifth Claim for Relief of the respective Complaints or Amended Complaints, as the case may be, filed in these actions by the nine Plaintiffs, alleging violations of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and of the equal protection guarantees of Article I, paragraph 1, and Article IV, section 7, paragraph 9(6), of the New Jersey Constitution (1947).

2. Each of the Plaintiffs is also a party to and is identified in a Stipulation of Facts of even date, entered in these actions (the "Stipulation of Facts"). As herein pertinent, the facts and exhibits included in said Stipulation of Facts are incorporated by reference into this Supplementary Stipulation as though fully set forth herein.

3. Except to the extent otherwise provided herein, the terms used in this Supplementary Stipulation shall have the same meanings as are ascribed thereto in paragraph 1 of the Stipulation of Facts.

4. Most of the facts herein stipulated are confidential in nature and, therefore, subject to the terms and provisions of the Consent Protective Orders heretofore entered in these actions. Consistent therewith, each Plaintiff is identified in this Supplementary Stipulation by number only. Attached hereto as Confidential Exhibit A* is a schedule identifying each such Plaintiff by name and number.

---

* The designation "Confidential Exhibit ——", as used herein, indicates that the exhibit is subject to the terms of the Consent Protective Orders entered herein and is, therefore, submitted herewith under sealed separate cover.

PETROCHEMICAL ACTIVITIES.

5. All nine Plaintiffs entering into this Supplementary Stipulation other than Plaintiff 2, are engaged in the manufacture and marketing/sale of chemical products, including petrochemicals derived from crude oil.

6. Plaintiff 2 manufactures petrochemical feedstocks, representing refined by-products of crude oil and natural gas, but does not manufacture petrochemicals. The feedstocks of Plaintiff 2 are processed by a third party pursuant to contractual agreement. Plaintiff 2 then markets and sells the resulting petrochemicals derived from crude oil.

7. The petrochemicals so manufactured and marketed or sold by these Plaintiffs include petrochemicals made or processed from taxable crude oil which is subject to the WPT Act. The Plaintiffs are liable for the WPT with that crude oil.

8. Of the nine Plaintiffs, six do not keep or maintain records differentiating between the percentage of their net income derived from the manufacture and sale of petrochemicals using crude oil and that derived from the manufacture and sale of petrochemicals using natural gas. Of the remaining three Plaintiffs, Plaintiff 4 derived approximately 4% of its separate company net income during the period at issue from the manufacture and sale of petrochemicals using crude oil; Plaintiff 3 derived 1.9% of its consolidated earnings during that period from its United States petrochemical operations using crude oil; and Plaintiff 2 had no net income during that period from the marketing and sale of petrochemicals using crude oil.

9. Of the six Plaintiffs which did not maintain records of the type described in paragraph 8 of this Supplementary Stipulation, four do maintain records reflecting the percentage of their net income or consolidated earnings derived from the manufacture and sale of petrochemicals,

both those using crude oil and those using natural gas. The applicable percentages so reflected for each of these Plaintiffs are set forth in Confidential Exhibit B hereto.

10. The cost of the taxable crude oil constituent of each petrochemical using crude oil is a component of the cost of that petrochemical.

11. Attached hereto as Confidential Exhibit C is a schedule reflecting the following information with respect to the petrochemical operations of Plaintiff 3: (a) the major petrochemicals manufactured and sold; (b) the per unit cost of the crude oil constituent of each such petrochemical; and (c) the WPI cost component of the foregoing per unit crude oil constituent cost.

12. Attached hereto as Confidential Exhibit D is a schedule reflecting the following information with respect to the petrochemical operations of Plaintiff 4: (a) the major petrochemicals manufactured and sold; (b) the per unit manufacturing cost of each such petrochemical; and (c) the average per unit cost of the crude oil constitutent of the petrochemicals manufactured and marketed by Plaintiff 4.

13. There exist non-oil producing chemical companies which are engaged in the manufacture and sale/marketing of petrochemicals. These chemical companies are also engaged in business in New Jersey, including the marketing or sale of petrochemicals. Attached hereto as Exhibit 1 is a representative list of such companies.

14. The non-oil producing chemical companies identified in Exhibit 1 purchase the crude oil constituent of their petrochemical products from, among others, oil producers, both integrated and non-integrated, including certain of the Plaintiffs. Attached hereto as Confidential Exhibits E to H are schedules reflecting for Plaintiffs 1, 3, 5 and 7, respectively, the following information: (a) the major petrochemicals manufactured and sold; and (b) the petrochemicals manufactured and/or marketed by each Plaintiff's non-oil producing chemical company competitors engaged in business in New Jersey.

Respectfully submitted,

Hon. IRWIN I. KIMMELMAN
Attorney General of New Jersey
Richard J. Hughes Justice Complex
CN 112
Trenton, New Jersey 08625
Attorney for Defendant

IRWIN I. KIMMELMAN
Attorney General of New Jersey

By: /s/ Mary R. Hamill
MARY R. HAMILL
Deputy Attorney General

STRYKER, TAMS & DILL
33 Washington Street
Newark, New Jersey 07102
Attorneys for Plaintiff

STRYKER, TAMS & DILL

By: /s/ Charles M. Costenbader
CHARLES M. COSTENBADER

Dated: May 11, 1984

SUPPLEMENTARY STIPULATION OF FACTS

EXHIBIT 1

Representative List of Non-Oil Producing Chemical Companies Engaged in Business in New Jersey

Union Carbide Corp.

Texas Eastman Company

Gill & Duffus Chemicals Inc.

McKesson Chemical Co.

Devon Chemicals Inc.

Borden Inc.

Celanese Chemical Co., Inc.

ICC Industries Inc.

Phillips Brothers Chemical, Inc.

EXCERPT FROM MONTHLY ENERGY REVIEW (MAY 1983)

ENERGY INFORMATION ADMINISTRATION U.S. DEPARTMENT OF ENERGY

Petroleum Price Summary

	Actual Domestic Average Wellhead Price	Refiner Acquisition Cost of Crude Oil			No. 6 Residual Oil Price Average	
		Domestic	Imported	Composite	Wholesale	Retail
	Dollars per barrel					
1976 AVERAGE	8.19	8.84	13.48	10.89	10.72	11.49
1977 AVERAGE	8.57	9.55	14.53	11.96	11.96	13.23
1978 AVERAGE	9.00	10.61	14.57	12.46	11.51	12.75
1979 AVERAGE	12.64	14.27	21.67	17.72	17.66	18.67
1980 AVERAGE	21.59	24.23	33.89	28.07	23.14	26.09
1981 January	28.85	32.71	38.85	34.86	31.14	33.65
February	34.14	36.27	39.00	37.28	31.81	36.04
March	34.70	36.97	38.31	37.48	31.78	36.11
April	34.05	35.58	38.41	36.58	30.56	34.70
May	32.71	35.21	37.84	36.11	30.41	34.11
June	31.71	34.20	37.03	35.03	25.95	31.03
July	31.13	33.76	36.58	34.70	26.52	30.57
August	31.13	33.79	35.82	34.46	27.01	30.52
September	31.13	33.47	35.44	34.11	26.20	30.33
October	31.00	33.48	35.43	34.07	26.78	30.32
November	30.98	33.49	36.21	34.33	27.99	30.16
December	30.72	33.51	35.95	34.33	27.26	30.90
AVERAGE	31.77	34.33	37.05	35.24	28.96	32.50
1982 January	30.87	33.39	35.54	33.95	27.07	29.83
February	29.76	32.71	35.48	33.40	26.29	30.02
March	28.31	31.08	34.07	31.81	25.73	29.50
April	27.65	30.27	32.82	30.83	25.46	28.21
May	27.67	30.37	32.78	31.02	26.52	28.93
June	28.11	30.79	33.79	31.74	26.62	29.59
July	28.33	30.92	33.44	31.74	25.97	29.33
August	28.18	30.85	32.95	31.45	26.34	28.44
September	27.99	30.76	33.03	31.40	26.49	28.43
October	28.74	31.38	33.28	31.98	27.52	29.28
November	28.70	31.57	33.09	32.07	28.31	29.84
December	28.12	30.80	32.85	31.29	26.81	28.47
AVERAGE	28.52	31.22	33.55	31.87	26.55	29.08
1983 January	27.22	30.55	R31.40	R30.73	NA	NA
February	26.41	29.25	30.87	29.61	NA	NA
March	NA	NA	NA	NA	NA	NA

Geographic coverage: the 50 United States and the District of Columbia, except for the refiner acquisition cost of crude oil, which is the 50 United States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands. [Footnotes omitted]

SUPREME COURT OF THE UNITED STATES

No. 87-453 and 87-464

AMERADA HESS CORPORATION, *et al.*,
Appellants,

v.

DIRECTOR, DIVISION OF TAXATION,
NEW JERSEY DEPARTMENT OF THE TREASURY; and

TEXACO, INC. and TENNECO OIL COMPANY,
Appellants,

v.

DIRECTOR, DIVISION OF TAXATION,
NEW JERSEY DEPARTMENT OF THE TREASURY

The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

November 9, 1987

Justice O'Connor took no part in the consideration or decision of this order.

SUPREME COURT OF THE UNITED STATES

No. 87-453

AMERADA HESS CORPORATION, *et al.*,
Appellants

v.

DIRECTOR, DIVISION OF TAXATION,
NEW JERSEY DEPARTMENT OF THE TREASURY

Appeal from the Supreme Court of New Jersey

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted. This case is consolidated with 87-464 *Texaco, Inc. and Tenneco Oil Company v. Director, Division of Taxation, New Jersey Department of the Treasury*, and a total of one hour is allotted for oral argument.

May 16, 1988

Justice O'Connor took no part in the consideration or decision of this case.

A true copy
JOSEPH F. SPANIOL, JR.

Test:

Clerk of the Supreme Court
of the United States

By /s/ [Illegible]
Deputy

SUPREME COURT OF THE UNITED STATES

No. 87-464

TEXACO, INC. and TENNECO OIL COMPANY,
Appellants
v.
DIRECTOR, DIVISION OF TAXATION,
NEW JERSEY DEPARTMENT OF THE TREASURY

Appeal from the Supreme Court of New Jersey

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted. This case is consolidated with 87-453 *Amerada Hess Corporation, et al. v. Director, Division of Taxation, New Jersey Department of the Treasury*, and a total of one hour is allotted for oral argument.

May 16, 1988

Justice O'Connor took no part in the consideration or decision of this case.

A true copy
JOSEPH F. SPANIOL, JR.

Test:

Clerk of the Supreme Court
of the United States

By /s/ [Illegible]
Deputy